

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

SAM GORDON LUSK, et al.,

Plaintiffs,

v.

No. 6:08-cv-182 MV/KBM

EUGENE SANCHEZ, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Defendants' Application for Attorney Fees (Doc. 249), which was filed in response to the Court's May 9, 2011 Memorandum Opinion and Order sanctioning Plaintiffs "for the reasonable costs, including fees, that Defendants incurred in preparation of the Motion to Dismiss for Discovery Abuse and in connection with the March 31, 2011 and any subsequent deposition of Dr. Jensen." (Doc. 230). The Application, which is supported by the Affidavit of Christopher R. Reed (Doc. 249-1), seeks costs and fees in the amount of **\$4,977.09**, broken down as follows:

Costs relative to the March 31, 2011 deposition of Dr. Jensen in Houston, Texas

- **\$616.80** for airfare to and from Houston
- **\$138.14** for car rental in Houston
- **\$116.99** for hotel in Houston
- **\$51.66** for incidentals

Attorneys fees incurred relative to the March 31, 2011 deposition of Dr. Jensen for the work of Attorney Christopher R. Reed at a rate of \$121.00 per hour

- **\$496.10** for 4.1 hours reviewing documents, outlining deposition questions and preparing for the deposition

- **\$1597.20** for 13.2 hours traveling to and from the deposition site in Houston, Texas
- **\$60.50** for .5 hours at the deposition waiting for Dr. Jensen to arrive, in discussions with counsel, and further preparing for the deposition
- **\$217.80** for 1.8 hours attending the deposition of Dr. Jensen

Attorneys fees incurred relative to Defendants' Motion to Dismiss for Discover Abuse for the work of Attorney Christopher R. Reed at a rate of \$121.00 per hour

- **\$1681.90** for 13.9 hours researching and drafting Defendants' Motion to Dismiss for Discovery Abuse

On May 22, 2011, Plaintiffs filed Objections to Defendants' Application for Attorney Fees (Doc. 252), arguing that Defendants failed to document the reasonableness of the fees through the production of contemporaneous documented timesheets. Specifically, Plaintiffs' Objections question the reasonableness of the 4.1 hours spent in preparation for the deposition of Dr. Jensen, noting that Defendants conducted almost no cross-examination of Dr. Jensen during the March 31, 2011 deposition. Plaintiffs' Objections also question the reasonableness of the 13.9 hours spent in preparing and drafting the Motion to Dismiss for Discovery Abuse based on the failure to provide timesheets. Finally, Plaintiffs argue that Defendants failed to provide supporting documentation for their costs.

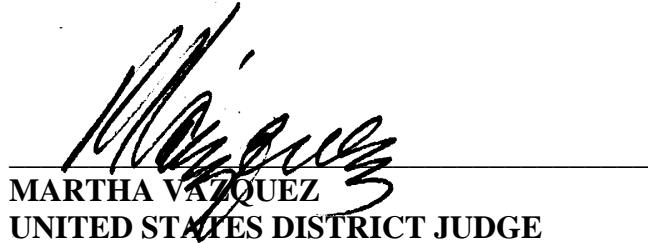
On June 6, 2011, Defendants' filed their Reply to Plaintiffs' Objections (Doc. 268), arguing that timesheets need not be provided unless requested. Nonetheless, Plaintiffs attached the relevant timesheets to their Reply (Doc. 268-2), as well as receipts for all costs being sought in connection with the deposition of Dr. Jensen (Doc. 268-3). Plaintiffs also argue in the Reply that the approximately four hours spent preparing from Dr. Jensen's deposition was not unreasonable. Specifically, they note that they did, in fact, conduct a limited cross examination

of Dr. Jensen on those issues they felt were necessary; that preparing for a deposition requires not just preparing cross examination, but also review of records and preparation necessary to anticipate the questions that will be asked by opposing counsel; and that the scope of cross examination may vary extensively depending on direct examination and that based on direct examination and the Court's previous orders, Defendants decided that they required only limited cross-examination.

The Court, having carefully reviewed the briefs submitted by the parties and all supporting documentation, finds that the costs are properly supported by documentation and are reasonable and that the attorney fees requested are reasonable both in the amount of time expended and the hourly rate charged.

IT IS THEREFORE ORDERED that Defendants are awarded costs and attorney fees in the amount of Four Thousand Nine Hundred Seventy Seven and 9/100 Dollars (\$4,977.09).

Dated this 13th day of July, 2011.



MARTHA VAZQUEZ
UNITED STATES DISTRICT JUDGE

Attorneys for Plaintiffs:

Conrell Brown, Esq.
Janeri Rivero, Esq.
Frank V. Balderrama, Esq.

Attorney for Defendants:

Nicole M. Charlebois, Esq.
Christopher R. Reed, Esq.